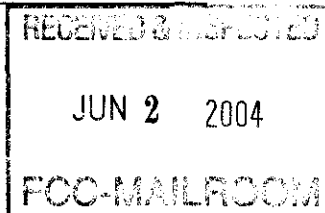


Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554



ET Docket No. 04-35

In the Matter of

**New Part 4 of the Commission's Rules
Concerning Disruptions to Communications**

Comments of Cingular Wireless LLC

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SUMMARY

Cingular urges the Commission not to extend its mandatory wireline outage reporting requirements to wireless carriers. The events which led the Commission to adopt the wireline outage reporting requirements in the early 1990s are not present in today's wireless marketplace. When it adopted the wireline outage reporting regime, the Commission was faced with a recent history of devastating network outages, no voluntary industry sharing of outage data and no development of best practices. At the time it adopted the initial wireline outage reports, the Commission also caused to be formed the Network Reliability Council (NRC), a voluntary assemblage of wireline chief executives, consumer advocates and state regulators to collect and analyze data and determine the root cause of the recent outages. The NRC collected and analyzed massive amounts of data and ultimately produced a thousand page report on network reliability. It also developed industry best practices to assist in preventing future outages and restoring networks when outages occurred. This massive industry effort was voluntary, and could not have been accomplished with only the data collected by the Commission pursuant to its mandatory outage reporting system.

By contrast, today's wireless marketplace is fiercely competitive, with network reliability a major marketing point by wireless carriers. Wireless carriers report on a voluntary basis outage information to the Network Reliability and Interoperability Council (NRIC). The raw outage data is scrubbed to remove carrier-identifiable information for both security and competitive reasons. The data is then used to perform root-cause analyses and to develop industry best practices. In the short time that wireless carriers have been participating in the NRIC process, hundreds of voluntary best practices

have been developed. Making wireless outage reporting mandatory will not result in any significant consumer benefit, but it will cause immeasurable harm to wireless carriers and their customers.

Since 9/11, Congress has recognized the need to protect critical infrastructure, both public and private, from physical and cyber attack by our enemies. Congress passed the Homeland Security Act and the Critical Infrastructure Protection Act of 2001. Both statutes encourage owners of private critical infrastructure to share with the federal government information regarding the reliability and survivability of the infrastructure. One of the key requirements for securing protection under these statutes is that the information must be provided *voluntarily*. Information that is the subject of a mandatory data collection does not qualify for protection from disclosure under these statutes. Congress clearly intended that this information remain confidential. Any action by the Commission that would remove wireless infrastructure from protection under these statutes would be contrary to the public interest and a danger to public safety.

The Commission should encourage wireless carriers to participate in the current voluntary outage reporting regime rather than imposing mandatory outage reporting where it does not currently exist.

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Cingular Wireless LLC ("Cingular"), through undersigned counsel, hereby comments on the Notice of Proposed Rulemaking ("NPRM") released February 23, 2004 in the captioned proceeding. For the reasons set forth below, Cingular urges the Commission not to extend its mandatory wireline carrier outage reporting requirements to wireless carriers.

I. Introduction.

In 1990 and 1991 wireline telecommunications carriers experienced a series of network outages. Significant outages by AT&T, Pacific Bell and Bell Atlantic led the Commission to conclude that it needed to adopt a network outage notification system.¹ The Commission initially required local exchange and interexchange carriers to report outages that the carrier estimated affected 50,000 potential users of its network for 30 minutes or more.² The Commission declined to extend the reporting requirement to cellular and satellite carriers:

However, we find no justification to extend the reporting requirements to satellite or cellular carriers or competitive access providers. Although disruptions to these services may be significant, alternative methods of communication are generally available to these users. We believe that the

¹ *Notification by Common Carriers of Service Disruptions*, CC Docket No. 91-273, *Report and Order*, 7 FCC Rcd 2010 ¶ 5 (1992) ("Report and Order").

² *Id.* ¶ 11.

emergency reporting requirements we are adopting today are best limited to those services where outages have raised the greatest concerns: basic local exchange and interexchange telephone services.³

The Commission encouraged carriers to exchange service outage and network reliability information voluntarily within the industry.⁴ Two issues were referred by the Commission to the newly formed Network Reliability Council ("NRC"): whether a reporting threshold lower than 50,000 potentially affected customers should be adopted, and whether a separate threshold should be adopted for outages affecting 911 services or major airports.⁵

The NRC was composed of the chief executive officers of most wireline U.S. telecommunications companies, user and consumer group representatives, and a state regulatory representative.⁶ The NRC not only addressed the two issues referred to it in the *Report and Order*, but it also issued a series of recommendations to the Commission on the appropriate parameters for network outage reports by wireline carriers. Among the NRC's recommendations were the following:

- a) outages potentially affecting more than 50,000 customers and lasting more than 30 minutes be reported initially within 120 minutes, with a final report within 30 days;
- b) outages potentially affecting between 30,000 and 50,000 customers be reported initially within three days, with a final report within 30 days;
- c) mission critical outages lasting 30 minutes or more affecting nuclear power plants, major military installations, major airports, 911 tandems, and key government

³ *Id.* ¶ 25.

⁴ *Id.* ¶ 27.

⁵ *Id.* ¶ 15.

⁶ *Id.* Separate Statement of FCC Chairman Alfred C. Sikes. The NRC was formed to provide the Commission and the industry with recommendations as to how public telephone network outages can be avoided and, if they occur, how their impact can be minimized. *Id.* ¶ 15.

facilities be reported by the affected facility to the National Communications System ("NCS")⁷ which would either forward a report of the outage to the Commission that contains all of the information required by Section 63.100 of the Rules, forward a redacted version to the Commission, or hold the report at the NCS, depending on the degree to which notification of the outage might effect NS/EP concerns;⁸ and

d) interexchange carriers be permitted to use blocked calls to determine whether the threshold for reporting an outage has been reached.⁹

The data relied upon by the NRC was provided voluntarily by the industry members and was much deeper and more granular than that reported to the Commission pursuant to Section 63.100. Responses to research requests and questionnaires submitted to the industry through Bellcore were aggregated by a third party. Extensive root cause analysis of the data led to the development of voluntary industry "best practices" for dealing with switch failures, power system problems, signaling system issues, digital cross connect system problems, fire prevention and E911 outages. In all, the NRC's findings and recommendations total more than 1,000 pages and were published as *Network Reliability: A Report to the Nation*.¹⁰

In the *MOO/FNPRM* the Commission accepted most of the recommendations of the NRC and proposed their adoption as Commission rules. On August 1, 1994, the Commission released a *Second Report and Order* codifying most of the NRC's

⁷ The NCS consists of representatives from 23 federal departments, agencies, or entities which lease telecommunications facilities significant to national security and emergency preparedness ("NS/EP"). The mission of the NCS is to coordinate planning and provisioning for NS/EP in all circumstances. *Amendment of Part 63 of the Commission's Rules to Provide for Notification by Common Carriers of Service Disruptions*, 8 FCC Rcd. 8517, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking* ("MOO/FNPRM") (1993) fn 4.

⁸ MOO/FNPRM ¶ 4.

⁹ MOO/FNPRM ¶ 5.

¹⁰ MOO/FNPRM ¶ 8; *Network Reliability: A Report to the Nation*, published by National Engineering Consortium, June, 1993.

recommendations.¹¹ The Commission did not adopt the NRC best practices as legal requirements, but strongly encouraged industry members to continue to implement rapidly the NRC best practices.¹² The Commission extended its network outage reporting requirements to competitive access providers¹³, but again found that the record did not justify extending the reporting requirements to cellular carriers and satellite carriers. The Commission referred to the NRC the issue of whether the special facilities outage reporting requirements should be expanded to include cellular, satellite and other wireless carriers.¹⁴ The Commission expressly recognized that it is in no one's interest to adopt burdensome reporting requirements that provide little useful information and that might interfere with attempts to restore service.¹⁵

II. The Proposed Extension of Mandatory Wireline Outage Reporting Requirements to Wireless Carriers is Unnecessary and Unjustified.

Despite the fact that the Commission has twice considered and rejected imposing mandatory network outage reporting requirements on wireless carriers, the NPRM now seeks to justify imposing such requirements on wireless carriers based on three premises, each of which is false. The first premise is that the data contained in the mandatory wireline outage reports enabled the NRC to develop the industry "best practices" that assist carriers and manufacturers to avoid outages and to facilitate restoration efforts when outages do occur.¹⁶ As noted above and as acknowledged in detail in the *MOO/FNPRM*, the initial wireline industry best practices were developed by the NRC utilizing massive amounts of data that were provided *voluntarily* by wireline carriers. At

¹¹ *Amendment of Part 63 of the Commission's Rules to Provide for Notification by Common Carriers of Service Disruptions*, 9 FCC Rcd 3911, *Second Report and Order* (1994) ("Second Report and Order").

¹² *Second Report and Order* ¶ 68.

¹³ *Second Report and Order* ¶ 80.

¹⁴ *Second Report and Order* ¶ 84.

¹⁵ *Second Report and Order* ¶¶ 13 and 57.

¹⁶ *NPRM* ¶ 4.

the time the initial set of best practices was presented to the Commission by the NRC, *mandatory* outage reporting had only been in effect for a year, and only applied to outages affecting 50,000 or more customers. Working through the NRC, wireline carriers *voluntarily* submitted reports of outages affecting between 30,000 and 50,000 customers, and reports of outages that affect special offices and facilities such as 911 emergency service, major airports, nuclear power plants and military bases, regardless of the number of customers affected. In addition, wireline carriers *voluntarily* supplied detailed data regarding outages going back several years before mandatory reporting came into effect. It was through the analysis of this *voluntary* data that the initial set of best practices was developed.¹⁷

The second premise is that voluntary best practices cannot be developed for wireless carriers because wireless carriers are unwilling to supply the necessary data on a voluntary basis.¹⁸ This is incorrect. Wireless carriers were invited to participate in the Network Reliability and Interoperability Council (“NRIC”) VI. As a result of this participation, best practices have been developed for wireless carriers. In fact, the NRIC web site lists 730 best practices applicable to wireless carriers, many of which are only applicable to wireless carriers.¹⁹ In addition, the major wireless carriers are now participating in an Industry Led Outage Reporting Initiative (“ILORI”) that will provide the Commission with the data necessary to perform its duties and to allow the NRIC to continue to develop wireless industry voluntary best practices.²⁰ As Chairman Powell recently stated:

¹⁷ MOO/FNPRM ¶ 6-8.

¹⁸ NPRM ¶¶ 11-12.

¹⁹ See www.nric.org. Go to “Best Practices” and use the keyword “wireless”.

²⁰ NPRM ¶ 11, noting the improvement in the voluntary participation in the NRIC trial reporting process.

In 2002, we re-chartered NRIC to address the new and urgent threat to our homeland. Both its focus and membership were broadened, recognizing the need to take a more holistic view of network security. Specifically, the composition of NRIC VI was expanded beyond wireline carriers to include wireless carriers, ISPs, the satellite industry and others. By the end of 2003, NRIC VI, under the very capable leadership of Richard Notebaert of QWEST, had revised over 800 best practices to better prepare operators of the public switched telecommunications network, and to address emerging issues of cyber-security....²¹

The third premise underlying the NPRM is that the gains realized through the wireline mandatory reporting requirements can expect to be replicated by imposing mandatory reporting requirements on wireless carriers.²² There are significant reasons to doubt the validity of this premise as well. The premise ignores the fundamental differences between the wireline industry of the early 1990's and the wireless industry of today, as discussed in section C, below. In the highly competitive wireless marketplace of today, any wireless carrier that fails to meet its customer's expectations with regard to service quality will quickly find itself without that person as a customer. No regulatory mandate is needed to spur wireless carriers to provide high-quality, disruption-free service to their customers.

A. The Wireless Marketplace is Highly Competitive.

The Commission has recently reaffirmed that the wireless marketplace in the United States is robustly competitive.²³ In the *Eighth Report* the Commission concluded:

Continued downward price trends, the continued expansion of mobile networks into new and existing markets, high rates of investment, and churn rates of about 30 percent, when considered together with the other

²¹ Remarks of Michael K. Powell, Chairman, Federal Communications Commission, at the NSTAC XXVII Executive Session Luncheon, U.S. Chamber of Commerce, May 19, 2004, Washington, D.C. (as prepared for delivery) (*Powell NSTAC Remarks*).

²² NPRM ¶ 7.

²³ *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, WT Docket No. 02-379, *Eighth Report*, FCC 03-150 (2003) ¶ 5 ("*Eighth Report*").

metrics, demonstrate a high level of competition for mobile telephone consumers.²⁴

The Commission found that 95 percent of the population of the United States lives in counties with access to three or more wireless carriers; 83 percent lives in counties with five or more wireless carriers competing to offer service.²⁵ Wireless customers have ample alternatives to a carrier that does not live up to their service quality requirements.

B. Service Quality is a Competitive Driver in the Wireless Marketplace.

The 30 percent churn rate cited above is clear evidence that wireless customers will not put up with poor network quality. The Commission found that customers surveyed indicated that cost and network quality are the main reasons for changing service providers each year. Service quality is a close second behind price as a reason to switch carriers or remain with the present provider.²⁶ Any wireless carrier that does not do everything in its power to minimize service disruptions faces a sure loss of customers and revenue. Service outages result in lost revenue, not just for the duration of the outage, but also from lost customers who will take their business to a carrier which provides superior quality service.

C. The Presumed Benefits of Wireline Outage Reporting are “Business-as-Usual” in the Wireless Marketplace.

The NPRM reaches a tentative conclusion that imposing mandatory outage reporting requirements on wireless carriers will provide benefits similar to those that are attributed to wireline service outage reporting.²⁷ There is no reason to make that assumption. The Commission should keep in mind the conditions that led to the adoption

²⁴ *Eighth Report* ¶ 57.

²⁵ *Eighth Report* ¶ 18.

²⁶ *Eighth Report* ¶¶ 68-69.

²⁷ *NPRM* ¶ 4.

of the network outage reports in the first place. The wireline carriers had suffered a series of devastating network outages. There was no forum for sharing outage information and remedies. No industry best practices existed. Thus, there was a huge upside that the wireline outage reports could assist in reaching.

By contrast, today's wireless marketplace is characterized by vigorous competition and highly reliable networks, established fora like the NRIC for sharing information and developing best practices, and educated consumers willing and able to change carriers if their requirements for network reliability are not met. This is "business-as-usual" in today's wireless marketplace, and there is no reason to assume that the imposition of mandatory reporting requirements is going to provide significant additional benefits to consumers. To the contrary, there are substantial reasons for the Commission to refrain from imposing such requirements, as discussed below.

II. Any Outage Reporting by Wireless Carriers Must Be Voluntary, Not Mandatory.

The NPRM makes a good case that network outage reporting and root cause analysis of outages has led to the development of best practices and has fostered a "data-driven, self-improvement model."²⁸ What the NPRM fails to do is explain why the existing, voluntary reporting regime is inadequate to allow this process to continue.

As discussed above, the initial wireline industry best practices were the product of voluntary production and analysis of huge amounts of data that went far beyond what is reported pursuant to Section 63.100. In the *MOO/FNPRM* the Commission described the process utilized by the NRC as follows:

²⁸ *NPRM* ¶ 7.

The Steering Team provided for third party aggregation of data in response to research requests and questionnaires submitted by the groups through Bellcore. Group status reports to the Team were presented monthly beginning in August of 1992. The methodology for each group's research proceeded from identification of other industry efforts to study reliability in their assigned areas, through data collection and root cause analysis of the data, to the formulation of final Best Practices, key lessons and recommendations, including alternative ways to prevent and minimize problems. Each team was required to develop metrics and benchmarks for measuring the effectiveness of the solutions it discovered once they were implemented....²⁹

The entire process which led to the initial set of wireline best practices was voluntary.

The continued review and refinement of the wireline industry was done by successor NRC's (now NRICs), which rely on data submitted voluntarily in addition to that reported pursuant to Section 63.100. As noted above, best practices applicable to wireless carriers have been subsequently developed. There is no reason that the existing, voluntary outage reporting and analysis of wireless industry outages by the NRIC should not continue, thereby building on current best practices. However, as shown below, there are very important reasons not to convert the voluntary reporting regime to a mandatory one.

A. Congress Has Seen the Need to Protect Vital but Vulnerable Infrastructure By Enacting the Critical Infrastructure Protection Act.

Following the horrors of 9/11, Congress recognized that the nation's critical infrastructure, both government and private, needs protection against physical or cyber attack. In the Critical Infrastructure Protection Act of 2001,³⁰ Congress stated that the policy of the United States is to protect critical infrastructure, including telecommunications, through a public-private partnership involving corporate and non-

²⁹ MOO/FNPRM ¶ 8.

³⁰ 42 USCA § 5195c.

governmental organizations.³¹ The Act calls for the use of modeling, simulation, and analysis by Federal Government and private sector persons as a means to enhance the stability and preserve critical infrastructures.³² As part of that protection, Congress encouraged private owners of critical infrastructure to share with the federal government, on a voluntary basis, information regarding the security and survivability of their infrastructure. Only information that is submitted *voluntarily* is eligible for critical infrastructure protection. Section 5(a)(1) of the Critical Infrastructure Protection Act of 2001 provides:

Critical infrastructure information that is voluntarily submitted to a covered federal agency for analysis, warning, interdependency study, recovery, reconstitution, or other informational purpose ... [is] not to be made available under [the Freedom of Information Act].

Likewise, the Homeland Security Act of 2002, Section 724 provides protection against public disclosure for critical infrastructure information that is voluntarily supplied to a federal agency. The Homeland Security Act requires federal officials who “advise, alert, [or] warn” of critical infrastructure threats to withhold any voluntarily submitted critical infrastructure information as well as “information that is proprietary, business sensitive, or otherwise not appropriately in the public domain. In proposing to require mandatory reporting and to allow public access to outage reports submitted by wireless carriers, the NPRM is in direct contravention of the will of Congress.³³

B. The Commission Cannot Protect From Public Disclosure Information That is Submitted in Response to a Mandatory Data Collection.

The Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, governs public access to information in the hands of federal agencies. FOIA proceeds from the premise that

³¹ 42 USCA § 5195c(c)(2).

³² 42 USCA § 5195c(d)(2)(D).

³³ NPRM ¶ 7.

public access to agency records is in the public interest. There are nine exceptions contained in FOIA concerning categories of records where the confidentiality of the information contained in the records outweighs the public interest in making such records accessible.³⁴ FOIA exemption three protects the release of records otherwise exempt by statute. FOIA exemption four protects the release of trade secrets and similar proprietary commercial or financial information. FOIA exemption four only protects information that “for whatever reason, would customarily not be released to the public by the person from whom it is obtained.”³⁵ It is because FOIA exemption four only applies to information submitted voluntarily to the government that the Critical Infrastructure Protection Act and the Homeland Security Act both limit their protection to voluntarily submitted information. The Commission should not adopt mandatory outage reporting requirements for wireless carriers where the mandatory nature of the reporting requirement would strip the information provided of the protection against disclosure so clearly intended by Congress.

1) Public Disclosure of Network Outage Data Will Damage Competition.

Wireless carriers are not only concerned about public disclosure of critical infrastructure information for security reasons, but also because to do so would place confidential business information in the hands of competitors. The Commission has gone to extraordinary lengths to promote the vigorous competition that currently exists in the wireless communication marketplace. The Commission should take no action that would damage that competition.

³⁴ See 5 U.S.C. § 552(b).

³⁵ *Critical Mass Energy Project v. NRC*, 975 F.2d 871,878 (D.C. Cir. 1992).

One reason for the reluctance of wireless carriers to provide voluntary outage information to the Commission is a fear that there will be no protection afforded to this competitively sensitive information. This is understandable since the Commission generally does not afford confidential treatment to the outage reports of wireline carriers.³⁶ The voluntary outage reporting process at the NRIC allows the raw data to be “scrubbed and stripped of carrier-specific identification so that critical infrastructure information is not made available to potential bad actors and so that confidential competitive information is not released. Essentially, what is reported is (1) the fact that an outage occurred, (2) the extent of the outage (how many customers were affected) (3) the geographic area, (4) how it was resolved, and (5) the best practices implicated by the outage. This level of detail has been sufficient to develop industry best practices without compromising security of critical facilities and competitively sensitive information.

2) The Commission Must Not Put Sensitive Infrastructure Information into the Hands of Potential Terrorists.

The Commission has recognized the necessity to protect critical infrastructure information from a national security/emergency preparedness perspective. That is why the *Second Report and Order* adopted a different procedure for outages in mission critical facilities. Under the rules, outages in mission critical facilities are reported by the affected facility to the NCS. That body then determines whether to release the information to the Commission, redact the information, or hold the report at the NCS. Both the Critical Infrastructure Information Protection Act and the Homeland Security Act were adopted by Congress to ensure that critical infrastructure information does not fall into the hands of potential terrorists. The Commission should be equally vigilant that

³⁶ *Second Report and Order* ¶ 79; *NPRM* ¶ 52..

its rules do not inadvertently provide terrorists with information that could be used to harm the American people. As Chairman Powell recently noted: "In The post 9/11 world, security is our greatest challenge and must be our highest priority."³⁷

C. Existing Voluntary Reporting by the Wireless Industry Will Meet the Commission's Needs.

As the Commission has recognized,³⁸ it is difficult for a wireless carrier to determine how many customers are potentially affected by an outage. Under the existing voluntary reporting regime, wireless representatives to the NRIC recommended using a blocked call count of 90,000 as a reporting threshold. Specifically, an event is reportable if it generates 90,000 originating blocked calls within 30 minutes.³⁹ This metric is applicable in the event of a switch failure or a service degradation that results in an excessive number of blocked calls.⁴⁰ Outages that meet these criteria are sent to the NCS⁴¹ within three days (72 hours) of the event. A final report is filed within 30 days of the outage. In completing the final report, the carrier conducts a root cause analysis and determines best practices implicated by the outage that should be implemented to alleviate the cause of the disruption in the future. The ILORI process will be much the same, except that there will be a mechanized process for submitting the reports.

This voluntary reporting process has the advantages of a simple metric to trigger reporting, and a reasonable time for submission of the initial report so that the available resources are focused on restoring service while the outage is underway. As noted above,

³⁷ *Powell NSTAC Remarks.*

³⁸ *NPRM* ¶ 36.

³⁹ If blocked calls are not available (e.g., if the switch is down or excessive traffic has triggered a termination of the switch's statistical calculations) historic call attempt averages would be used.

⁴⁰ Under this proposal only "unplanned" outages would be reportable. If a switch is taken out of service for maintenance or software upgrades, no reportable outage would occur.

⁴¹ The National Communications System/National Coordinating Center is a joint industry-government organization and mechanism by which the federal government and telecommunications industry respond to national security and emergency preparedness telecommunications service requirements.

this voluntary reporting regime has resulted in the identification of hundreds of wireless best practices, and should be sufficient to allow the Commission to track trends and spot trouble areas.

D. A Cost/Benefit Analysis Should Be Completed Prior to Imposing Mandatory Outage Reporting on the Wireless Industry.

As shown above, there are significant differences between the present wireless marketplace and the wireline marketplace that existed in the early nineties when mandatory wireline outage reporting was adopted. The competitive necessity for wireless carriers to provide high quality, reliable service drives provisioning and maintenance decisions. The ILORI process to provide the data needed by the NRIC to develop wireless best practices is in place and functioning. It is certainly not intuitively obvious that mandatory reporting requirements are necessary to facilitate the development of voluntary best practices, as suggested by the NPRM.⁴²

Because the costs of adopting a mandatory network outage reporting regime for wireless carriers are significant and the benefits of such a regime uncertain, Cingular recommends that the Commission undertake a formal cost/benefit analysis prior to adopting mandatory outage reporting for wireless carriers. Such an analysis should consider not only the cost of the resources required both at the Commission and at the carriers to establish and operate the outage reporting regime, but also the national security and competitive costs of mandatory reporting.

III. The Metrics Proposed for Reporting by Wireless Carriers are Flawed.

If the Commission decides to proceed with mandatory network outage reporting by wireless carriers, modification to several of the proposed metrics should be made.

⁴² NPRM ¶14.

Cingular's suggested changes to the proposed metrics are set forth below.

A. The "User-Minutes" Metric is Unnecessarily Complicated.

The NPRM proposes to substitute "user" for "customer" in Section 63.100. The stated reason for the change is that some carriers were considering large corporate and governments accounts to be a single "customer", even though hundreds or thousands of end "users" were affected by an outage.⁴³ Cingular supports the clarification that it is the number of end users, not billed accounts, which are to be counted to determine whether the reporting threshold is met.

The NPRM proposes to count as a "user" anyone who could have been "potentially affected" by an outage, whether or not that individual tried to place a call.⁴⁴ This may be relatively straightforward in the case of wireline networks, but the inherent mobility of wireless users makes it impossible to determine how many potential users may be affected by an outage. For example, many wireless users turn off their devices when receiving an incoming call would distract others, such as in restaurants, meetings, concerts, etc. These customers would be invisible to the wireless switch. Because, as discussed below, the other metrics proposed for wireless carriers would "swallow" the user/minute metric, Cingular recommends that this metric not be applied to wireless providers. Instead, Cingular recommends that a simple metric, unplanned failure of a mobile switching center ("MSC") for 30 minutes and/or 90,000 blocked originating calls within a 30 minutes time period, as recommended by the NRIC committee, be used as the threshold for wireless carriers.

⁴³ NPRM ¶ 20.

⁴⁴ NPRM ¶ 22.

B. The Separate Metric for E-911 Outages is Unnecessary.

The NPRM proposes to impose on wireless carriers the duty to report any outage that lasts at least 30 minutes and that “potentially affect the ability to originate, complete or terminate 911 calls successfully....”⁴⁵ This requirement, if adopted for wireless carriers, would subsume the “user/minutes” metric, since any MSC outage would affect the ability of customers to originate 911 calls, regardless of the number of users potentially affected by the outage. Furthermore, while Cingular shares the Commission’s concern about the reliability of E911 service, many of the “wireless network elements identified in the NPRM are outside of the wireless carrier’s control, such as LEC trunking. Cingular’s proposed reporting threshold, all unplanned outages of a MSC greater than 30 minutes and/or 90,000 blocked calls within a 30 minute time period, will satisfy any concerns in this regard.

Cingular opposes any requirement for real-time notification of PSAPs of local network failures or degradations. The carrier’s limited resources need to be deployed to restore service rather than notifying PSAPs on a real-time basis, particularly since a MSC may serve multiple PSAPs.

C. Reporting a Mobile Switching Center that is Incapable of Processing Calls for At Least 30 Minutes is a Better Metric for Wireless Carriers.

If the Commission decides to impose an outage reporting requirement on wireless carriers, a simple metric will capture most circumstances in which the Commission would want an outage reports: i.e., reporting a MSC that is incapable of processing calls for 30 minutes and/or 90,000 originating blocked calls within a 30 minute time period, excluding planned maintenance and software upgrades. This metric is unambiguous and

⁴⁵ NPRM ¶ 25.

would not require the dubious calculation of “user/minutes” and would allow carriers to base this metric on more reliable historical data. The NPRM proposes to include this metric in addition to the “user/minute” metric.⁴⁶ If the Commission extends mandatory network outage reporting to wireless carriers, Cingular recommends the former metric as the trigger and the latter metric (“user/minute”) is unnecessary.

D. The 120 Minute Reporting Requirement is Unreasonably Short.

The current rules have two time thresholds for initial outage reports. For outages affecting 50,000 or more users, the initial report must be filed within 120 minutes. For outages affecting 30,000 to 50,000 customers, the initial report is due within three days. The NPRM proposes to require all initial reports within 120 minutes (or shorter).⁴⁷

The reason the Commission adopted the longer reporting requirement for smaller outages was two-fold. The Commission recognized the need of carriers experiencing an outage to devote additional time at the outset to the essential task of restoring network services. The Commission also recognized that the 120 minute threshold did not allow sufficient time for a full investigation, resulting in many reports being filed that were incomplete or late or had to be retracted later.⁴⁸

The Commission is considering applying mandatory reporting requirements to wireless carriers for the first time. The three day requirement for smaller outages has been found sufficient by the Commission in the past.⁴⁹ A three day requirement for wireless carriers will allow carriers to devote scarce resources to restoring service at the outset of the outage and will allow the wireless carriers to conduct a more thorough

⁴⁶ NPRM ¶ 39.

⁴⁷ NPRM ¶¶ 27-30.

⁴⁸ *Second Report and Order* ¶ 13.

⁴⁹ *Id.*

investigation prior to filing an initial outage report. The Commission should encourage wireless carriers to file their initial outage report as soon as practicable, but in no event less than three days from the first notice the carrier receives of an outage.

E. The Commission Should Eliminate the Separate Reporting Requirement for Fires.

The NPRM notes that the separate reporting requirement for outages resulting from fires has resulted in very few reports, and that any major fire-related outage would be captured by the general outage reporting metric. The NPRM therefore proposes to eliminate the separate requirements pertaining to fire related outages.⁵⁰ Cingular concurs. Whatever general metric the Commission adopts for wireless carriers would clearly cover any major fire incident due to the time it takes to restore service after a major fire.

F. The Commission Cannot Lawfully Delegate Rulemaking Authority to the Staff.

The proposed rules in Appendix A would grant to the Chief of the Office of Engineering and Technology “delegated authority to make revisions to the filing system and template”⁵¹ The filing system and template are being adopted by the Commission in this Notice and Comment rulemaking proceeding. For the Commission to delegate to the staff the ability to alter those elements of the rules is the equivalent of delegating rulemaking authority to the staff, an unprecedented and unlawful delegation. The proposed delegation does not even require the staff to give notice and receive comment on proposed changes to the filing system and template. The Commission must retain rulemaking authority at the Commission level.

⁵⁰ NPRM ¶ 26.

⁵¹ NPRM Appendix A, proposed revision to § 0.241 of the Rules.

IV. Conclusion.

The existing, voluntary reporting regime for network outages of wireless carriers is providing the information necessary to develop best practices and to track trends in outages. The proposal to make this voluntary reporting mandatory will cause immeasurable harm to the wireless carriers and their customers. Mandatory reporting would strip critical wireless infrastructure of the protection intended by Congress under the Critical Infrastructure Protection Act and the Homeland Security Act. By contrast, the alleged benefits of converting from a voluntary to a mandatory reporting regime are elusive at best. The Commission should reject adopting mandatory outage reports for wireless carriers.

Respectfully submitted,

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May 25, 2004

CERTIFICATE OF SERVICE

I, Lydia Byrd, an employee in the Legal Department of Cingular Wireless LLC, hereby certify that on this 25th day of May, 2004, courtesy copies of the foregoing Comments of Cingular Wireless were sent via first class mail, postage prepaid to the following:

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights, MD 20743

John Muleta, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
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In addition, the document was filed electronically in the Commission's Electronic Comment Filing System on the FCC website.

s/ Lydia Byrd
Lydia Byrd
